

OLL 89-0091

10 January 1984

*File
Stevens
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Bill
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General
Legislation*

MEMORANDUM FOR: General Counsel
Director of Finance
Director of Medical Services
DD/OP/SP
C/OP/RAD

FROM:

[Redacted]

Legislation Division, OLL

SUBJECT: Federal Physicians Comparability Allowance
Amendments of 1983

1. Attached for your reference is the final version of Public Law 98-168, the Federal Physicians Comparability Allowance Amendments of 1983. The President signed this bill into law on 29 November 1983.

2. Title I of this law extends the authority to pay federal physicians a comparability allowance until 30 September 1989. This title also relieves certain federal physicians from the obligation to repay compensation received in Fiscal Year 1982 in excess of the statutory limit. The statutory limit was exceeded when these individuals mistakenly were paid maximum physicians comparability allowances and SES performance awards.

3. Title II of this law addresses the problem of dual retirement coverage for federal employees hired after 1 January 1984. This title provides that during the two year period pending the creation of a new Government retirement system, newly hired employees will contribute 1.3 percent of their salary to the Civil Service Retirement System and 7 percent of their salary to Social Security. The contribution deficiency to the Civil Service Retirement System resulting from the employee's 1.3 percent contribution will be paid by the Department of Treasury. This title also contains rules for retirement benefits during the interim period and an election provision for certain current employees who will be covered by Social Security after 1 January 1984.

4. Finally, Title III of the law requires the Office of Personnel Management to report on the effect of the statutory limit on SES pay on the recruitment, retention and morale of SES career appointees.

[Redacted]

STAT

Attachment

cc:

[Redacted]

Liaison

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Public Law 98-168
98th Congress

An Act

To amend title 5, United States Code, to extend the Federal Physicians Comparability Allowance Act of 1978, and for other purposes.

Nov. 29, 1983
[H.R. 2077]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PHYSICIANS COMPARABILITY ALLOWANCE

SHORT TITLE

SEC. 101. This title may be cited as the "Federal Physicians Comparability Allowance Amendments of 1983".

EXTENSION OF AUTHORITY

SEC. 102. (a) The second sentence of section 5948(d) of title 5, United States Code, is amended to read as follows: "No agreement shall be entered into under this section later than September 30, 1987, nor shall any agreement cover a period of service extending beyond September 30, 1989."

(b) Section 3 of the Federal Physicians Comparability Allowance Act of 1978 (5 U.S.C. 5948 note) is amended by striking out "September 30, 1985" and inserting in lieu thereof "September 30, 1989".

PAY OF CERTAIN FEDERAL PHYSICIANS FOR FISCAL YEAR 1982

SEC. 103. (a) Any individual whose aggregate pay for fiscal year 1982 exceeded the limitation set forth in section 5383(b) of title 5, United States Code, is relieved of all liability to the United States for any amounts paid to such individual in excess of such limitation if, and to the extent that, such liability takes into account any allowance paid under section 5948 of such title.

5 USC 5948 note.

(b)(1) The appropriate agency head shall pay, out of any appropriation or fund available to pay allowances under section 5948 of title 5, United States Code, to any individual as to whom liability is relieved under subsection (a), an amount equal to the aggregate of any amounts paid by such individual, or withheld from sums otherwise due such individual, with respect to any liability relieved under such subsection.

5 USC 5948.

(2) A payment under paragraph (1)—

(A) shall be made only if written application therefor is submitted to the appropriate agency head, in accordance with such regulations as the President or his designee may prescribe, within two years after the date of enactment of this Act; and

(B) shall not be considered for purposes of applying the limitation set forth in section 5383(b) of title 5, United States Code.

(c) For the purpose of this section—

Definitions.

PUBLIC LAW 98-168—NOV. 29, 1983

Sanitized Copy Approved for Release 2010/06/14 : CIA-RDP89-00066R000200130001-8 new Government retirement system.

- (1) the term "aggregate pay", as used with respect to an individual, means the aggregate amount paid to such individual under sections 4507, 5382, 5384, and 5948 of title 5, United States Code;
- (2) the term "appropriate agency head", as used with respect to an individual, means the head of the agency employing such individual when such individual was paid an allowance with respect to which liability is relieved under this subsection; and
- (3) the term "agency" has the meaning given such term by section 5948(g)(2) of such title.

TITLE II—FEDERAL EMPLOYEES RETIREMENT ADJUSTMENT

SHORT TITLE

SEC. 201. This title may be cited as the "Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983".

STATEMENT OF POLICY

SEC. 202. It is the policy of the Government—

- (1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act) or January 1, 1986, whichever is earlier;
- (2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;
- (3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;
- (4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act until a new Government retirement system covering such employees and officers is established;
- (5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and
- (6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1986, with credit for service performed after December 31, 1983, by such em-

DEFINITIONS

SEC. 203. (a) For the purposes of this title—

- (1) the term "covered employee" means any individual whose service is covered service;
- (2) the term "covered retirement system" means—
- (A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;
- (B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);
- (C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and
- (D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant's basic pay for covered service, as determined by the President;
- (3) the term "covered service" means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954 by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67); and
- (4) the term "new Government retirement system" means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1986, and (B) takes effect on or before January 1, 1986.

- (b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

CONTRIBUTION ADJUSTMENTS

SEC. 204. (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

- (1) section 8334 of title 5, United States Code;
- (2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);
- (3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or
- (4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant; for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1, 1986. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or Janu-

ary 1, 1986, as the case Sanitized Copy Approved for Release 2010/06/14 : CIA-RDP89-00066R000200130001-8
Government retirement system.

(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

Sec. 205. (a) For purposes of this section—

(1) the term "contribution deficiency", when used with respect to a covered retirement system, means the excess of—

(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

(2) the term "appropriate agency head" means—

(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.);

(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

(b) At the end of each of fiscal years 1984, 1985, and 1986, the appropriate agency head—

(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

(c) Before closing the accounts for each of fiscal years 1984, 1985, and 1986, the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retire-

ment, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

SEC. 206. (a) For the purposes of this section, the term "interim covered service" means covered service to which section 204(a) applies.

(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1986, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the

on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act to the annuitant and is attributable to such service, as determined under subsection (g).

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after January 1, 1986, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act commences and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act to an individual and is attributable to interim covered service shall be determined by—

(1) computing the amount of such benefits including credit for such service;

(2) computing the amount of such benefits, if any, without including credit for such service; and

(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

Information
submittal.

TRANSFER OF CREDIT TO NEW RETIREMENT SYSTEM

SEC. 207. (a) Any covered employee who first becomes employed in civilian service by the Government or first takes office in civilian service in the Government on or after January 1, 1984, shall become subject to such new Government retirement system as may be established.

5 USC 8331 n

(b) In the case of any covered employee who is subject to a covered retirement system on or after January 1, 1984, and thereafter becomes subject to a new Government retirement system—

(1) credit for the service of such employee to which section 204(a) applies shall be transferred from such covered retirement system to the new Government retirement system for the purposes of the new Government retirement system; and

(2) such service shall be considered not to be creditable service for the purposes of such covered retirement system, effective on the date on which such employee becomes subject to such new Government retirement system.

ELECTIONS BY CERTAIN COVERED EMPLOYEES

SEC. 208. (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act beginning on or before December 31, 1983, may—

5 USC 8331 n
Ante, p. 67.
42 USC 410.

(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

(A) to terminate participation in such system, effective after December 31, 1983; or

(B) to remain under such system, as if the preceding sections of this Act and the amendments made by this Act had not been enacted; or

(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act and the amendments made by this Act; or

(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual's contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such

Refund of
retirement
contributions

the election.

(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act and the amendments made by this Act.

TITLE III—SENIOR EXECUTIVE SERVICE

Report to
Congress.
5 USC 5383 note.

SEC. 301. (a) The Office of Personnel Management shall study and, within 12 months after the date of enactment of this Act, submit to each House of the Congress a report on the effect which section 5383(b) of title 5, United States Code (relating to the maximum aggregate amount payable to a member of the Senior Executive Service in a fiscal year) has had with respect to recruitment, retention, and morale of career appointees in the Senior Executive Service.

(b) Section 3135(a)(7) of title 5, United States Code, is amended to read as follows:

"(7) for the preceding fiscal year, by agency—

"(A) the number of performance awards, and the number of ranks, conferred, as well as the respective aggregate amounts paid for such awards and ranks;

"(B) the percentage of career appointees in such agency who received any such award, and the percentage who received any such rank; and

"(C) the name of each individual who received any such award or rank, the award or rank received, and a brief summary of the reasons why such individual was selected;"

Approved November 29, 1983.

LEGISLATIVE HISTORY—H.R. 2077 (S. 1009):

HOUSE REPORT No. 98-542 (Comm. of Conference).

SENATE REPORTS: No. 98-218 accompanying S. 1009 (Comm. on Governmental Affairs) and No. 98-307 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 129 (1983):

Sept. 19, considered and passed House.

Sept. 30, S. 1009 considered in Senate; H.R. 2077, amended, passed in lieu.

Nov. 4, House concurred in Senate amendment with an amendment; Senate concurred in House amendment with an amendment.

Nov. 11, Senate agreed to conference report.

Nov. 16, House agreed to conference report.

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*Social Security Act
& Related Laws
November 1980 Edition*

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Sec. 210(a)

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Definition of Employment**Sec. 210.** For the purposes of this title—**Employment**

(a) The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee (i) of an American employer (as defined in subsection (e)), or (ii) of a foreign subsidiary (as defined in section 3121(l) of the Internal Revenue Code of 1954) of a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954) during any period for which there is in effect an agreement entered into pursuant to section 3121(l) of the Internal Revenue Code of 1954, with respect to such subsidiary; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) (A) Service performed by an individual in the employ of his spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 of the Internal Revenue Code of 1954 by virtue of any provision of law which specifically refers to such section in granting such exemption;

(6) (A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit

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Revised December 1978

association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;¹

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an inmate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system other than the retirement system of the Tennessee Valley Authority);

¹ Clause (v) was amended by section 703(j)(14)(C) of Public Law 95-600.

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 218,

(B) service which, under subsection (k), constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the

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District of Columbia, paid on a per diem, meeting, or other fee basis, or

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1954 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954, which is exempt from income tax under section 501(a) of such Code, but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to section 3121(k) of the Internal Revenue Code of 1954, (or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k)) is in effect if such service is performed by an employee—

(i) whose signature appears on the list filed (or deemed to have been filed) by such organization under such section 3121(k),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii)) was filed (or deemed to have been filed), or

(iii) who, after the calendar quarter in which the certificate was filed (or deemed to have been filed) with respect to a group described in paragraph (1)(E) of such section 3121(k), became a member of such group,

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except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in such paragraph (1) (E) with respect to which no certificate is (or is deemed to be) in effect;¹

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1954;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a) (3) of the Internal Revenue Code of 1954 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 218(c) (5) are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218;²

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

¹ Subparagraph (B) was amended by section 1(a) of P.L. 94-563.

² Paragraph (10) was amended by sec. 351(a)(3)(B) of Public Law 95-216.

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(14) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669);

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;¹

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a non-immigrant alien admitted to Guam pursuant to section 101(a) (15) (H) (ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (15) (H) (ii));

¹ Paragraph (17) was amended by sec. 351(a) (1) of Public Law 95-216.